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CENTRAL FAX CENTER  
OCT 06 2005

**FAX COVER SHEET****FAX NUMBER TRANSMITTED TO: (571)273-8300**

To: A. Phi Dieu Tran  
Of: USPTO, Group Art Unit 3637  
From: Mark Plager  
Client/Matter: 10072-002  
Date: October 6, 2005 (12:43pm)

DOCUMENTS	NUMBER OF PAGES*
Response to 9/15/05 Office Action	3

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**CENTRAL FAX CENTER****OCT 06 2005****IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Inventor: Thomas R. Herren ) G.U.A.  
Serial No.: 10/600,806 ) 3637  
Title: Multipurpose Construction )  
Assembly and Method )  
Filed: 06/19/2003 )  
Examiner: A. Phi Dieu Tran )

**RESPONSE TO DETAILED ACTION**  
*Election / Restriction*

Ass't Commissioner of Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

In response to the September 15, 2005 Restriction of the above-referenced patent application. The applicant finds the Office Action to be incomplete, non-informing, and improper pursuant to § 707.07(d) of the Manual of Patent Examination Procedure. Section 707.07(d) states "where a claim is refused for any reason relation to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated . . ." M.P.E.P. §707.07(d). The Examiner's restriction fails to "fully and clearly" identify which, if any, claims constitute "two or more independent and distinct inventions."

Section 121 of the Patent Act provides that "[i]f two or more independent and distinct

1 inventions are claimed in one application, the Commissioner may require the application to be  
2 restricted to one of the inventions." 35 U.S.C. 121 (emphasis added). The Examiner's  
3 restriction is not predicated upon the claims of the pending application, but rather the figures.  
4 Figures of a patent application do not define the scope of the applicant's claimed invention. *See*  
5 *Kaplan v. Robertson*, 50 F.2d 617, 620 (D.Md. 1931)( Description of invention as contained in  
6 claims, interpreted in light of specifications, is to be neither restricted nor extended by drawings).  
7 *See, also, Harvey Hubbell, Inc. v. General Electric Co.*, 267 F. 564, 570 (2d Cir. 1920). Rather,  
8 the scope of the applicant's invention is defined by the claims. *See* 35 U.S.C. 112 ¶ 2 ("The  
9 specification shall conclude with one or more claims particularly pointing out and distinctly  
10 claiming the subject matter which the applicant regards as his invention."); *See, also, Ziegler v.*  
11 *Phillips Petroleum Co.*, 483 F.2d 858, 869, 177 U.S.P.Q. 481 (5<sup>th</sup> Cir. 1973), *certiorari denied*,  
12 94 S.Ct. 597, 414 U.S. 1079, 38 L.Ed.2d 485, 180 U.S.P.Q. 1 (Claims delineate scope of  
13 protection afforded by a patent, not specific embodiments shown in patent drawings).  
14 Consequently, the Examiner's restriction is improper because it fails to identify which, if any,  
15 claims support the existence of "two or more independent and distinct inventions" within the  
16 subject application.

17 Applicant cannot respond to the September 15, 2005 Office Action because it fails to  
18 provide "full and clear" identification of which, if any, claims constitute "two or more  
19 independent and distinct inventions." Accordingly, Applicant requests a restriction requirement,  
20 if indeed one is required, which adequately provides a basis and rationale, (i.e., the identification  
21 of claims which constitute two or more independent and distinct inventions), which can be  
22 reasonably addressed by means of a response. With respect to such a response, Applicant  
23 requests a reasonable time period to prepare such a response.

24 Respectfully Submitted,

25  
26 October 5, 2005



27 Mark H. Plager, Reg. No. 35,648  
28 Attorney for Applicant

1 PLEASE RESPOND TO:

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